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9 Attorneys for Defendant California Department of Education

10
 11 UNITED STATES DISTRICT COURT

12 SOUTHERN DISTRICT OF CALIFORNIA

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 14 C.S., by and through his Conservator, MARY) Case No. 08-CV-0226 W (AJB)
 STRUBLE, et al.,)
)
 15 Plaintiff,) **DECLARATION OF GABRIEL C.**
 v.) **VIVAS IN SUPPORT OF**
) **DEFENDANT'S EX PARTE**
) **APPLICATION FOR AN EXTENSION**
 16 CALIFORNIA DEPARTMENT OF EDUCATION,) **OF TIME TO FILE DEFENDANT'S**
) **RESPONSE TO PLAINTIFFS'**
) **APPLICATION FOR TEMPORARY**
 17) **RESTRANDING ORDER**
 18 Defendant.)
 19)
 20)
 21)
 22)

23 I, Gabriel C. Vivas, declare under penalty of perjury:

- 24 1. I am an attorney licensed to practice law in California and I was admitted to practice before this
 Court on October 20, 1998.
- 25 2. I am employed by the California Department of Education (CDE) as a Deputy General Counsel
 and, in that capacity, I represent the defendant in this action.

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27 Case No. 08-CV-0226 W (AJB)

28 1 Declara. of G. Vivas in Support of Deft's Ex Parte App.
 For Extension of Time to File Deft's Response to
 Plaintiffs' Application for TRO

1 3. On February 20, 2008, Deputy General Counsel Gregory Rousseve spoke with me that
2 plaintiffs' counsel, Ms. Ellen Dowd, had sent him an electronic communication (hereinafter "e-mail")
3 informing him that she filed a request for a Temporary Restraining Order (TRO). The e-mail had the
4 pertinent pleadings attached.

5 4. That same day, Mr. Rousseve and I met with Assistant General Counsel Amy Holloway and
6 thereafter Ms. Holloway sent an e-mail to plaintiffs' counsel advising her that the CDE had not yet
7 been served with the summons and complaint and that the CDE's legal office would accept service.
8 (See, Exhibit 2)

9 5. After researching the address on the Proof of Service and the person named on the Proof of
10 Service on February 20, 2008, I discovered that the address on the Proof of Service that was included in
11 the TRO documents sent to Mr. Rousseve indicated that plaintiffs had served Diane Hasey at a San
12 Diego address. I contacted Ms. Hasey at a telephone number I found on an internet site. Ms. Hasey
13 informed me that she is an employee of the San Diego County Office of Education (SDCOE) and that
14 she recalled being served with a large stack of documents earlier in the month. She also said she told
15 the process server that the SDCOE is not the party named in the documents and that she is not
16 authorized to accept service on behalf of the CDE. Ms. Hasey told me that the process server then
17 made a telephone call. After, he told her that the instructions from the attorney who hired him were to
18 leave the documents with Ms. Hasey.

19 6. The CDE was not served with the summons and complaint until the late afternoon of February
20 25, 2008.

21 7. On February 26, 2008, I traveled from my office to San Luis Obispo where I appeared in court
22 on the following day. I did not return to my office until February 28, 2008.

23 8. I telephoned plaintiffs' counsel on the morning of February 28, 2008 and spoke with her later
24 that afternoon. During our conversation, I advised counsel of my concern with service of process and I
25 proposed a 30-day extension of the dates in the Court's order of February 20, 2008. (See, Exhibit 3).
26 At the end of our conversation, plaintiffs' counsel said she would convey my request to her client(s)
27 and respond to my request.

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9. On February 29, 2008, plaintiffs' counsel responded to my proposed extension of time with a counteroffer. As part of her counteroffer, plaintiffs included a set of conditions that, in my professional judgment, would jeopardize my client's case to an unreasonable degree.

Dated: March 5, 2008

/s/ Gabriel C. Vivas

GABRIEL C. VIVAS

Deputy General Counsel